

DEVIN DERHAM-BURK #104353
CHAPTER 13 STANDING TRUSTEE
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Trustee for Debtor(s)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA - DIVISION 5

In re:)
SPOTNITZ, CAREN) Chapter 13
SPOTNITZ, EDWARD) Case No. 10-5-7247 SLJ
Debtor(s)) THIRD AMENDED TRUSTEE'S OBJECTION
) TO CONFIRMATION WITH CERTIFICATE
) OF SERVICE
)
) Pre-Hearing Conference Date: JUNE 23, 2011,
) 2011
) Pre-Hearing Conference Time: 9:30 AM
) Place: 280 S. 1st Street Room 3099
) San Jose, CA
) Judge: Stephen L. Johnson

Devin Derham-Burk, Trustee in the above matter, objects to the Confirmation of this 0% Plan for the following reasons:

1. The plan does not comply with 11 U.S.C. § 1325(a)(5). The debtors list Tax Collector of Santa Clara County on Schedule D, but have omitted them from the plan. An Amended Plan must be filed to provide for this creditor.
2. The Trustee questions the feasibility of the debtor's Plan pursuant to 11 U.S.C. § 1325(a)(6) as there is a deficit of in the debtors' budget of \$1,332.77 per month, after they make their plan payment of \$150.00.

3. Pursuant to the United States Supreme Court decision in Ransom v. FIA Card Services, N.A., fka MNBA America Bank, N.A., 561 U.S. ____ (2011) the debtors are not allowed to take a vehicle ownership cost for a vehicle owned free and clear. The Trustee requests that the debtors amend the Statement of Current Monthly Income to remove the expense at lines 28 and/or 29.
4. The debtors failed to comply with 11 U.S.C. § 1325(b)(1)(B). Pursuant to line 59 of the debtors' Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income; the debtors have a monthly disposable income of \$1,520.85. The commitment period is 60 months; therefore, the total projected disposable income that must go to unsecured creditors is \$85,464.68. The following language must be added to Section 7 "Notwithstanding Section 2(d), general unsecured creditors shall receive no less than \$85,464.68." (Note: line 26, 28, 29, 50 and 60 are incorrect.)
5. The debtors are proposing to pay student loan debt differently than other unsecured debt in the case in contravention of 11 U.S.C. §1322(b)(1). The Trustee requests that the debtors amend Schedule J to remove the \$310.00 monthly payment for "Student Loans."
6. The Trustee is unable to determine whether all of the debtors' projected disposable income is being applied to pay unsecured creditors under the plan as required by 11 U.S.C. §1325(b)(1)(B). The debtors have taken an "Additional Expense Claims" deduction on Line 60 a. of Form 22C for Student Loan Payment in the amount of \$355.00. The Trustee avers that this expense is not required for the health and welfare of the debtors pursuant to 11 U.S.C. §707(b)(2)(A)(ii)(I). Without this expense deduction the debtors would have disposable income and would be required to pay their unsecured creditors approximately \$21,300.

1 7. The debtor Edward Spotnitz has failed to comply with 11 U.S.C. § 521(a)(1)(B)(iv)
2 because she has failed to provide the Trustee with copies of his payment advices for May
3 1, 2010 through May 31, 2010. If the debtor cannot provide said payment advices a
4 declaration, signed by the debtor under penalty of perjury, must be provided explaining
5 why said payment advices are not available.
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7
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9

Dated: May 19, 2011

/S/ Devin Derham-Burk

Chapter 13 Trustee

CERTIFICATE OF SERVICE BY MAIL

I am not less than 18 years of age and not a party to the within case; my business address is 983 University Ave. C-100, Los Gatos, California 95032. I served a copy of the within Objection to Confirmation by placing same in an envelope in the U.S. Mail at Los Gatos, California on May 20, 2011.

Said envelopes were addressed as follows:

CAREN & EDWARD SPOTNITZ
32 LACROSSE DR
MORGAN HILL CA 95037

LAW OFFICES OF SCOTT SAGARIA
333 W SAN CARLOS ST #1700
SAN JOSE CA 95110

/S/ Clotilde Costa
Office of Devin Derham-Burk, Trustee